

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY TRIPOLI

C O N F I D E N T I A L STATE 110320

FOLLOWING SENT SECSTATE WASHDC FROM MONTREAL 06 JUN 73:

QUOTE MONTREAL 1153

FROM US REP ICAO

E. O. 11652: GDS

TAGS: ETRN, CA

SUBJ: REPORT ON ICAO COUNCIL ACTION - LIBYA AIRLINES INCIDENT

REF: A) MONTREAL 1132; B) STATE 106647; C. DILLON- HUFFMAN/ L
TELCONS; D) STATE 107354

1. SUMMARY: EGYPTIAN PROPOSAL CONDEMNING ISRAEL CO- SPONSORED BY EIGHT OTHER STATES, (CONGO, INDONESIA, LEBANON, SENEGAL, TUNISIA, USSR, INDIA, UGANDA) SECONDED BY FRANCE ADOPTED BY ROLL CALL VOTE 27-0-2 ABSTENTIONS (U. S. AND NICARAGUA). U. S. PROPOSALS TO AMEND DEFEATED: FIRST PARA 4 (US)/13/4; SECOND PARA PASSED BECAUSE LEBANON SECONDED AS STRENGTHENING FIRST PARA 13(US)/8/6; THIRD, 4(US)/11/6; FOURTH AND FIFTH RULED UN-ACCEPTABLE BY CHAIR AS ALTERNATIVES NOT AMENDMENTS; SIXTH, FAILED FOR LACK OF SECONDER.

SIXTH PROPOSAL (FOR AIR NAV COMMISSION TO STUDY AND RECOMMEND PREVENTATIVE MEASURES RE INTERCEPTION) HAD ALREADY BEEN SUGGESTED
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BY EGYPT AND WILL BE SEPARATE PROPOSAL BEFORE COUNCIL JUNE 6.
ALL COUNCIL MEMBERS FAVORABLE, BUT REFUSED TO INCLUDE IT IN
LIBYAN AIRLINES RESOLUTION.

2. COMMENT: FIRST TIME IN HISTORY OF ICAO, COUNCIL HAS
" CONDEMNED."

U. S. POSITION HAD EFFECT OF DENYING UNANIMITY FOR TEN- NATION
PROPOSAL WHICH HAD BEEN HOPED FOR BY ALL REPEAT ALL OTHER COUNCIL
MEMBERS ESPECIALLY IN VIEW OF NEW YORK ASSEMBLY RESOLUTION VOTE.
(NICARAGUA SIMPLY FOLLOWED U. S. LEAD AS OFTEN DOES.)

RECEIPT OF U. S. POSITION ONE HOUR AFTER MEETING STARTED
LEFT U. S. WITH NO NEGOTIATING POSSIBILITY. OVERALL U. S. POSI-
TION GENERALLY REGARDED BY COUNCIL AS " POLITICAL," RESPONSIVE TO
FACTORS OTHER THAN ICAO INVESTIGATION OF LIBYAN INCIDENT, WITH
VERY NEGATIVE REACTION. U. S. REP ASSUMES COST TO U. S.
POSITION IN ICAO OFFSET BY OTHER FACTORS.

FYI. SEVEN- MAN ISRAELI TEAM MAKING PRESENTATION COUNCIL
SEEMED PLEASED BUT NOT ENTHUSIASTIC ABOUT U. S. EFFORT, WHICH THEY
DESCRIBED AS " BRAVE." PRIOR TO MEETING THEY EXPRESSED TO U. S.
REP SURPRISE THERE WAS NO U. S. POSITION BECAUSE " THERE WAS MEET-
ING IN WASHINGTON THIS MORNING WHERE A POSITION WAS DECIDED ON".
ISRAEL' S 30- MINUTE PRESENTATION CAME EARLY IN COUNCIL MEETING.
U. S. POSITION WHEN RECEIVED TWO HOURS LATER, EMBARRASSINGLY
IDENTICAL.

3. ATTENDANCE: 29 OF 30 COUNCIL MEMBER STATES PRESENT (PAKISTAN
ABSENT). EGYPT REPRESENTED BY COUNCIL MEMBER MOURSEY, WITH
PASHA/ CONSUL ADVISOR. ISRAEL REPRESENTED BY MEIR ROSENNE/ LEGAL
ADVISER/ MINISTRY FOREIGN AFFAIRS/ TEL AVIV; WITH ADVISORS HARAN/
EXT. AFF.; EPHRATI/ CONSUL GENERAL; GLICKMANN/ EL AL; ZUSSMANN/
DIRECTOR/ LEGAL INTERNATIONAL AFFAIRS DIVISION/ CIVIL AVIATION
ADMINISTRATION TEL AVIV; AVACHAI, TEL AVIV.

ALTHOUGH INVITED, LIBYA AND SAUDI ARABIA DID NOT RESPOND.

4. MEETING OPENED WITH PRES/ COUNCIL INDICATING 3- PART PROCEDURE:

A) QUESTIONS OF CLARIFICATION ON ACCIDENT INVESTIGATION TEAM
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REPORT;

B) GENERAL COMMENTS;

C) PROPOSALS FOR COUNCIL ACTION. THERE WERE NO QUESTIONS.
GENERAL COMMENTS STARTED WITH

A. EGYPT, MAKING VERY SPECIFIC REFERENCE TO DETAILS IN
FACT- FINDING TEAM REPORT, EMPHASIZING: ISRAEL AIRCRAFT FAILURE
TO USE INTERCEPTION PROCEDURES (POSITION IN FRONT OF AIRCRAFT,
ROCKING OF WINGS, AND FOLLOW- ME TURN, ETC.; COMMUNICATIONS PROBLEMS
(INCLUDING FAILURE ISRAEL TO COMMUNICATE CAIRO VIA NICOSIA
(TWO MINUTES), ALTHOUGH TRACKED PLANE FOR SOME TIME); CURTAINS IN

CABIN OPEN SO INTERCEPTORS COULD SEE WAS CIVILIAN FLIGHT (ALTHOUGH ISRAEL HAD ASKED SURVIVORS TO SAY CURTAINS WERE CLOSED); ISRAEL SAID FIRED AT WING TIPS, BUT FIRED AT WING ROOTS WHERE FUEL TANKS LOCATED; SHOOT- DOWN WAS ORDERED FROM THE GROUND; ETC. PRESENTATION WAS CALM, TECHNICAL, RELATED ENTIRELY TO REPORT, ON PAGE/ PARAGRAPH BASIS.

B. ISRAEL' S STATEMENT WAS LOUD AND ACCUSATORY IN TONE. ROSENNE BEGAN BY SAYING THAT COUNCIL COULD " CONSIDER WASYS AND MEANS AVOIDING SUCH INCIDENTS IN FUTURE" OR DELIBERATION COULD BECOME " POLITICAL HARANGUE" WITH COUNCIL " KOW- TOWING TO MEMBERS WHOSE INTEREST IS IN POLITICAL VICTORIES" AND WHO " REGARD REGIONAL COOPERATION AS A MENACE." REFERRED TO ASSEMBLY CONDEMANATION BEFORE FACTS ASCERTAINED. REPEATEDLY ACCUSED EGYPT AND LIBYAN AUTHORITIES OF NEGLIGENCE, RECKLESSNESS, AND INCOMPETENCE" WITH MANY REFERENCES TO REPORT.

QUOTED QADDAFI SPEECH IN WHICH LIBYA REQUESTED EGYPT AIR FORCE TO SEND AIRCRAFT TO PREVENT LIBYAN FLIGHT FROM GOING INTO SINAI (NOT DONE BECAUSE OF WEATHER).

REFERRRED TO CIRCUMSTANCES AND POLITICAL ATMOSPHERE: AIRCRAFT WAS VAST DISTANCE FROM ANY ROUTE; PLANE HAD TRAVERSED ENTIRE EGYPTIAN AIRSPACE UNCHALLENGED (" BRISTLING WITH LARGEST CONCENTRATION OF MISSILES EVER KNOWN") AND ASSUMED CAIRO KNEW WHAT WAS GOING ON IN ITS AIRSPACE; QUESTIONED COMMUNICATION EQUIPMENT NOT WORKING; INCOMPETENCY OF AIR TRAFFIC CONTROLLERS (NOT CERTIFICATED) AND CHANGE OF SHIFTS; NO RESPONSE TO
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REQUEST FROM 5 ADAH FOR RADAR FIX; ETC. AIRCRAFT HEADED FOR BIRGAFGAFA, MAJOR MILITARY BASE, WHERE IT LOWERED AIRSPEED AND GEAR; ARABS HAVE HISTORICALLY USED CIVILIAN AIRCRAFT FOR POLITICAL VIOLENCE; CITED LONG LIST PREVIOUS INCIDENTS; ARABS PUBLICLY HAD THREATENED JUST WEEKS BEFORE - WITH ATTACK, LIQUIDATION ISRAEL, ETC. QUOTED LETTER OF CONGRESSMAN JOHN MURPHY, JANUARY 8, 1973, " BASED ON INTELLIGENCE," " HEADING FOR CATAS- TROPHIC AIR DISASTER," BY ARAB STATES: HIJACKED AIRLINER WILL BE CRASHED INTO DOWNTOWN TEL AVIV.

INDICATED ISRAEL HAD DONE EVERYTHING RIGHT - INTERCEPTION PROCEDURES, RELIEF TO SITE, PAYMENTS TO FAMILIES, ETC. TWICE REPEATED EARLIER POSITION THAT ISRAEL HAD FORCED 5 ADAH TO LAND - THEY DID NOT DESTROY IT IN THE AIR. WHEN IT LANDED IT WAS DESTROYED BY IMPACT WITH GROUND. (FYI. THIS APPROACH GREATLY ALIEN- ATED COUNCIL MEMBERS MOST OF WHOM ARE PILOTS, CONTROLLERS, ACCIDENT INVESTIGATORS, ETC. END FYI.)

RECOMMENDED VHF AT MILITARY RADAR STATIONS FOR CONTACT CIVILIAN AIRCRAFT, CITED EARLIER JORDAN/ ISRAEL LINK. ACCUSED EGYPT AGAIN OF NEGLIGENCE IN NOT ADVISING ISRAEL OF LOST AIR- CRAFT.

C. FRANCE MADE EXTREMELY STRONG STATEMENT AGAINST ISRAELI ACTION COMMENTING ON REPORT. BECAUSE DEATH FRENCH CREW ON PEACEFUL TECHNICAL ASSISTANCE, FRANCE HAD SENT OWN INVESTIGATION TEAM. MADE TECHNICAL POINTS REFERRING TO REPORT PARA/PAGE. REGARDING LOWERING OF GEAR OVER BIRGAFAFA SAID HE " DID NOT BELIEVE" THIS AS ISRAELIS REPORTED, BECAUSE SPEED OF AIRCRAFT WAS TOO HIGH. POINTED OUT AS OTHERS DID THAT ISRAELI INTERCEPTORS HAD NOT USED PROPER PROCEDURES. LIBYAN AIRCRAFT HAD NOT RESPONDED PROPERLY BUT HAD NO REASON TO, SINCE THOUGHT ESCORT WAS FRIENDLY (UNTIL FIRED ON).

5. THERE WERE NO OTHER GENERAL COMMENTS. (A) EGYPT THEN FORMALLY MADE PROPOSAL AND AT SAME TIME COUNTERED SOME SPECIFIC CHARGES ISRAEL HAD MADE, BY PAGE/ PARA.

(B) FRANCE DECLARED STRONG SUPPORT FOR PROPOSAL AND SECONDED IT BECAUSE " FOUND NO EXPLANATION NOR EXCUSE" FOR ISRAELI ACTION.

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(C) USSR MADE STRONG SUPPORT STATEMENT SAYING ISRAELI ACTION WAS WITHOUT PRECEDENT IN HISTORY OF WORLD AVIATION. CALLED EGYPT RESOLUTION " MILD," AND ASKED TO BE INCLUDED AS CO- SPONSOR.

(D) LEBANON THANKED INVESTIGATING TEAM; SUPPORTED PROPOSAL BECAUSE ISRAELI FIGHTERS DID NOT FOLLOW PROCEDURES, ETC.

(E) SENEGAL POINTED OUT THAT TEAM REPORTED DREW NO TECHNICAL CONCLUSIONS - HAD TO FIND HIMSELF. NO JUSTIFICATION FOR ISRAELI ACTION. SENEGAL REQUESTED DETAILED MINUTES OF MEETING AS SOON AS POSSIBLE.

(F) NICARAGUA FELT ASSEMBLY CONDEMNATION MIGHT HAVE BEEN PREMATURE. POINTED OUT NO CONCLUSIONS IN TEAM REPORT BUT UNDERSTOOD WHY. SAID ISRAEL ACTION NOT JUSTIFIED.

(G) SPAIN STRONGLY SUPPORTED EGYPT PROPOSAL AND EXPRESSED HOPE IT WOULD BE ADOPTED UNANIMOUSLY.

(H) TUNISIA POINTED OUT THAT ISRAELI MODERN FIGHTERS NO MATCH FOR CIVIL AIRCRAFT IN DISTRESS. THEY SHOULD HAVE ALLOWED IT TO GO BACK TO CAIRO. NO JUSTIFICATION FOR SHOOTING DOWN.

6. AT THIS POINT DISCUSSION TOOK DIFFERENT TURN. ISRAEL BROUGHT UP QUESTION OF BEIRUT IN FIRST PARA EGYPTIAN PROPOSAL. MADE FLAT STATEMENT THAT BEIRUT INCIDENT WAS " JUSTIFIABLE" - NO LIVES WERE LOST. SAID SECURITY COUNCIL RESOLUTION ON BEIRUT WAS SELF- CONTAINED AND DID NOT REFER MATTER TO ICAO COUNCIL. BEIRUT WORKING PAPERS NOT ON ORDER OF BUSINESS. ISRAEL SAID COUNCIL DOES NOT HAVE THE RIGHT TO " CONDEMN" - ASKED IF THERE IS PRECE-

DENT, HAS COUNCIL EVER CONDEMNED BEFORE?

PRES/ COUNCIL REPLIED: (A) REGARDING " REOPENING" OF BEIRUT MATTER, MENTION IN FIRST PARA WAS ONLY HISTORICAL REFERENCE, NOTHING MORE; (B) ASSEMBLY HAS " CONDEMNED" TWICE, BUT COUNCIL HAS NOT BEFORE; (C) REGARDING COUNCIL " RIGHT", IT IS AUTONOMOUS, CAN DO ANYTHING IT WANTS EXCEPT THOSE THINGS RESERVED TO ASSEMBLY.

7. ISRAEL QUESTIONED LEBANON' S RIGHT TO VOTE SINCE BEIRUT INCIDENT WAS MENTIONED, AND LEBANON AND EGYPT ARE " PARTIES TO CONFIDENTIAL

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DISPUTE."

IN THIS REGARD PRES/ COUNCIL SAID ICAO INTERPRETS " DISPUTE" LEGALISTICALLY. DIRECTOR, LEGAL BUREAU ELABORATED SAYING: ARTICLE 5 3 CHICAGO CONVENTION SAYS 1) ANY STATE MAY PARTICIPATE WITHOUT VOTE; 2) NO MEMBER SHALL VOTE IN DISPUTE TO WHICH IT IS PARTY. HE SAID THIS ARTICLE IS " PERFECTLY LINKED" TO ARTICLE 84 ON DISPUTES AND DEFAULT. LEBANON AND EGYPT ARE NOT CONVERTED INTO PARTIES TO DISPUTE AS RESULT THE EGYPTIAN PROPOSAL.

ISRAEL STATE " YES THERE IS A DISPUTE," AND REFERRED TO ARTICLE 38 INTERNATIONAL COURT JUSTICE AND INDICATED DISPUTE EXISTS ON INTERPRETATION OF INTERNATIONAL TREATY (CHICAGO CONVENTION), AND DISPUTE OVER INTERPRETATION OF FACT- FINDING TEAM REPORT. ISRAEL " RESERVED THE RIGHT TO RAISE THIS QUESTION AGAIN IN OTHER FORA." - - THAT IS, THE RIGHT OF PARTIES TO DISPUTE TO VOTE. FYI. INDIA/ PAKISTAN DISPUTE BEFORE COUNCIL NEXT WEEK. SINCE BOTH PARTIES NOW ON COUNCIL, ANCEL OUT VOTES. MAY BE REASON PAKISTAN ABSENT FROM THIS COUNCIL MEETING. END FYI.

8. SUPPORT FOR EGYPT RESUMED: CZECHOSLOVAKIA, CONSIDERED ISRAEL ACTION " DEEP VIOLATION."

INDIA SUPPORTED BOTH EGYPTIAN PROPOSALS: THE RESOLUTION AND SPECIFICALLY THE REFERRAL OF INTERCEPTION PROCEDURES TO AIR NAV COMMISSION.

CONGO REFERRED TO ISRAEL' S DEMAND FOR SANCTIONS AGAINST AIR PIRACY AS CRIMINAL ACT. CONGO CONSIDERED SHOOTING DOWN OF LIBYAN CRAFT EVEN WORSE CRIME AGAINST HUMANITY.

UGANDA CONSIDERED EGYPT RESOLUTION " MILD." (SAID HE WOULD NOT SHOUT HIS POSITION - AN OBVIOUS REFERENCE TO ISRAEL' S LOUD PRESENTATION.)

LEBANON REFERRED AGAIN TO UNANIMOUS SECURITY COUNCIL RESOLUTION ON BEIRUT INCIDENT. SAID ICAO COUNCIL " HAD NOT UP TO NOW EXPRESSED ITSELF."

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9. AT APPROXIMATELY 5:45 U. S. HAD NOT RECEIVED FINAL OVERALL POSITION ON RESOLUTION, BUT PRESENTED THE SIX AMENDMENTS CONTAINED IN INSTRUCTIONS (REFTEL). REQUESTED SEPARATE VOTE EACH PARA (FYI IN HOPE OF SALVAGING ONE OR TWO. END FYI)

SENEGAL ASKED IF THESE WERE TRULY AMENDMENTS OR ALTERNATE PROPOSALS. PRESIDENT SAID CHANGES TO PREAMBULATORY PARAS WERE CLEARLY AMENDMENTS, BUT WOULD RULE ON ACTION PARAS WHEN CAME TO THEM.

EGYPT REFUSED TO ACCEPT AMENDMENTS TO PROPOSAL (A FORMALITY) SAYING HIS RESOLUTION WAS THE LEAST POSSIBLE UNDER THE CIRCUMSTANCES AND HAD TAKEN INTO ACCOUNT THE POSITIONS OF MANY DIFFERENT MEMBER STATES.

U. S. PROPOSED AMENDMENT TO PARA 1 WENT TO VOTE. NICARAGUA/ NETHERLANDS SUPPORTED. LEBANON REQUESTED STATUTORY MAJORITY. LOST: 4 FOR (US, NICARAGUA, GERMANY , NETHERLANDS)/13 AGAINST/4 ABSTENTIONS (NORWAY, JAPAN, MEXICO, BELGIUM).

US AMENDMENT TO SECOND PARA WAS IMMEDIATELY SUPPORTED BY LEBANON BECAUSE HE INTERPRETED IT AS STRENGTHENING FIRST PARA. PRES/ COUNCIL ASKED IF US REP WISHED WITHDRAW. US STATED WE DID NOT INTERPRET THE PROPOSED CHANGE THAT WAY AND LEFT IT IN. IT CARRIED: 13(US)/8/6 (ARGENTINA, CONGO, FRANCE, NIGERIA, INDIA, MEXICO).

US AMENDMENT PARA 3 APPEARED HAVE NO SECONDER UNTIL NICARAGUA SENSING SITUATION SECONDED. EGYPT REQUESTED STATUTORY MAJORITY ON THIS AND ALL REMAINING AMENDMENTS. DEFEATED: 4 (US, NICARAGUA, GERMANY, NETHERLANDS)/11/6 (ARGENTINA, COLOMBIA, BRAZIL, MEXICO, UGANDA, JAPAN).

RE US AMENDMENT TO PARA 4 AND DELETION SUBPARA 4-1), PRES/ COUNCIL RULED THAT THESE WERE MAJOR SUBSTANTIVE CHANGES GOING BEYOND AMENDMENT AND WERE ALTERNATIVE PROPOSALS. FYI. PRES/ COUNCIL INDICATED INFORMALLY AFTER MEETING THAT THIS WAS PROBABLY BEST DECISION FOR US INTEREST SINCE BOTH PROPOSALS WOULD HAVE SUFFERED MAJOR DEFEAT. US REP AGREES ENTIRELY AND WOULD HAVE EXPECTED VOTES OF 28/1 OR 2 ON EACH ONE. END FYI.

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(FYI: AT APPROXIMATELY THIS POINT US REP RECEIVED FINAL INSTRUCTIONS BY TELEPHONE (CONFIRMED BY STATE 107354) END FYI.

RE US PROPOSAL TO ADD PARA TO RESOLUTION CALLING FOR AIR NAV

COMMISSION STUDY AND RECOMMENDATIONS RE PREVENTATIVE MEASURES ON INTERCEPTION PROCEDURES/ COMMUNICATIONS): SEVERAL STATEMENTS SUPPORTED SUCH REFERRAL (BELGIUM, SENEGAL, NIGERIA) BUT NOT IN LIBYAN AIRLINES RESOLUTION. BELGIUM EXPRESSED FEAR THAT DEFEAT OF PARA IN THIS RESOLUTION WOULD BE INTERPRETED AS DEFEAT OF SUBSTANCE OF PROPOSAL.

PRES / COUNCIL ASKED FOR SECONDER FOR THIS U. S. PROPOSAL. THERE WAS NONE REPEAT NONE, SO AMENDMENT DID NOT GO TO VOTE.

PRES/ COUNCIL SAID WORKING PAPER HAD BEEN PREPARED BY SECRETARIAT ON STUDY OF PREVENTATIVE MEASURES BY ANC, AS RESULT OF COUNCIL DELIBERATIONS IN FEBRUARY SHORTLY AFTER LIBYAN INCIDENT. WILL CIRCULATE JUNE 5 AND COME BEFORE COUNCIL JUNE 6.

10. EGYPTIAN PROPOSAL C- WP/5792 WENT TO VOTE WITH US CHANGE SECOND PARA. ROLL CALL VOTE. 27 FOR, NO OPPOSITION, 2 ABSTENTIONS (US AND NICARAGUA).

11. DISTRIBUTION OF COUNCIL DECISION: SENEGAL/ LEBANON/ USSR DISCUSSED PRESS LEAK. MONTREAL STAR CARRIED ARTICLE JUNE 4 BASED ON COPY " RESTRICTED" TEAM REPORT, WITH HEADLINES SLANTED AGAINST LIBYA. LE DEVOIR FRENCH PAPER CARRIED SIMILAR STORY JUNE 2.

FYI. ICAO SECRETARIAT RUMOR INDICATES MONTREAL PRESS OBTAINED FROM LONDON RELEASE BY ISRAEL. END FYI.

SENEGAL ASKED THAT STATES BE INFORMED OF COUNCIL DECISION PURSUANT ARTICLE 55 CHICAGO CONVENTION.

NIGERIA ASKED THAT STATES BE INFORMED PURSUANT ARTICLE 55(E). PRES/ COUNCIL SAID COUNCIL DID NOT ACT PURSUANT 55(E) BUT PURSUANT ASSEMBLY RESOLUTION 19-1.

USSR ASKED THAT ACCURATE PRESS RELEASE BE ISSUED BY ICAO " REPORTING REAL SITUATION."
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ISRAEL ASKED THAT ALL DOCUMENTS BE PUBLISHED INCLUDING TEAM' S
<< END OF DOCUMENT >>

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